

KEKER & VAN NEST LLP

Robert Van Nest
rvannest@kvn.com

September 26, 2011

VIA E-FILING

The Honorable William Alsup
United States District Court, Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102

Re: *Oracle America, Inc. v. Google Inc.*, No. 3:10-CV-03561-WHA (N.D. Cal.)

Dear Judge Alsup:

I write in brief response to Steven Holtzman's letter of earlier today, which letter asked the Court to deny Google's request to file a *Daubert* motion on aspects of the revised damages report of Oracle's damages expert Dr. Iain Cockburn. Mr. Holtzman argues that the Court should deny Google's request because Google has raised *Daubert* issues related to Cockburn in one of its five allotted motions *in limine*.

Google had no choice but to submit the *Daubert* challenges as a motion *in limine* in order to preserve its right to assert the challenge, in the event the Court denied Google's request to file a stand-alone *Daubert* motion. As Google pointed out previously, waiting to brief and hear the *Daubert* challenges later would have the advantage of allowing Google also to raise any issues presented by Cockburn's reply report, which Oracle has agreed to serve by October 10, 2011, a week before the scheduled pretrial conference. Having said that, Google defers to the Court as to whether it would prefer to consider these issues by way of a motion *in limine* or more formal and deliberate separate *Daubert* briefing.

Sincerely,

/s/ Robert A. Van Nest